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**Two-step test, Court of Justice of the European Union,
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Abstract: This work attempts to make a connection between the European Warrant Arrest (EWA) and torture. Torture not as a general notion but as a violation of the rights of the prisoner who is in prison due to an EWA. Also in this case the jurisprudence of the Court of Justice of the European Union (CJEU) as well as some cases of the European Court of Human Rights (ECtHR) try to shed not only light but also to interpret the rights included in the procedure of the EWA as an effective part of a system of mutual trust and legal assistance at European level.

Keywords: EWA; European Union law; two step test; torture; protection of human rights; principle of trust; European judicial cooperation; mutual trust.

Introduction

The Tampere European Council of 1991 constituted

“a technique of coordination between legal systems based on the presumption of equivalence between goods and values of entities (...)”

later establishing itself through Art.82, lett. 1 TFEU (Barnard, Peers, 2017; Blanke, Mangiamelli, 2021) relating to judicial cooperation in criminal matters of the EU. This is an important principle as we have seen over the years which has also found further support through the Framework Decision 2002/584/JHA (Liakopoulos, 2019)¹ relating to the European Warrant Arrest (EWA) (Klip, Glerum, Peristeridou, Da Silva Athayde Barbosa, Kijlstra, 2022), as a complementary instrument of international cooperation of a mandatory nature that differs from international judicial assistance and extradition requests. These are the main notions and principles of cooperation of the Member States of the EU that have worked to repress crimes that went beyond national jurisdiction and penal codes.

The basis of such cooperation was mutual recognition of the principle of mutual trust between Member States (Ildarovna Daminova, 2022). Already the recital n. 10 regarding the functioning of the EWA states “a high level of trust between Member States”. Making also an initial reference to the protection of human rights it specifies that the implementation

¹Framework Decision 2002/584/JHA of the Council of 13 June 2002 concerning the European arrest warrant and the surrender procedures between Member States, in OJ L 190 of 18 July 2002, p. 1ss.

of this mechanism can

“only be suspended in case of serious and persistent violation by a Member State of the principles, enshrined in Article 6, paragraph 1, of the Treaty on European Union (...)” (Liakopoulos, 2019).

The EWA numbers were high and that means that the need for this step was important despite the limitations of its effectiveness. The European Commission in the report to the European Parliament and the Council on the implementation of the Framework Decision on the European arrest warrant and surrender procedures between Member States, published in July 2020:

“(...) focused its assessment on the provisions considered central to ensuring the adequate functioning of this instrument, in particular on the designation of the competent judicial authorities, on the definition and scope of the arrest warrant European Union, on the deadlines for adopting a decision and for the surrender of a requested person, on the grounds for non-execution and verification of double criminality, on procedural rights and fundamental rights of requested persons (...)”².

The EWA is connected with the protection of the fundamental rights of wanted people, with the principle of mutual recognition, the principle of mutual trust on which the Court of Justice of the European Union (CJEU) was also based, tries to give an important image to the institute highlighting the absence of an explicit reason for refusal of execution which was linked to the protection of fundamental rights and the provision in the issuing country³.

²Report from the Commission to the European Parliament and the Council on the implementation of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, COM(2020) 270 final, 2 July 2020, pp. 4-5.

³Framework decision 2002/584/JHA, relating to the trial in absentia, was

The CJEU began its journey in this sector based on the functioning of the surrender procedure to emphasize the principle of mutual recognition and trust (De Boer, 2013; Delgado, 2013; Bobek, Adams Prassl, 2020) reaching maximum overruling with the sentence Aranyosi and Căldăraru (Woods, Watson, 2017)⁴ where it referred to a “blind” trust (Bang Fuglsang Madsen Sørensen, 2016; Anagnostaras, 2016; Lenaerts, 2017; Lenaerts, Bonichot, Kanninen, Naômè, Pohjankowski, 2019; Pellonpää, 2022). The Court established that:

“(...) for “exceptional reasons” linked to the failure to respect human rights in the issuing country, it is possible to suspend or not execute the EWA., and defined a two-level control system, the so-called two-step test (...)”⁵.

It was preferable to speak through the doctrine for a symbiotic relationship between the protection of fundamental rights and the related trust within the EWA outlined through the jurisprudence of the CJEU. The institution of the two-step test through the Aranyosi and Căldăraru case elaborated the cases that followed. The purpose of this test was to give the executing

introduced by framework decision 2009/299/GAI of the Council of 26 February 2009 amending framework decisions 2002/584/GAI, 2005/214/GAI, 2006/783/JHA, 2008/909/GAI and 2008/947/JHA, strengthening the procedural rights of individuals and promoting the application of the principle of mutual recognition to decisions pronounced in the absence of the person concerned at the trial, in OJEU L 81 of 27 March 2009, p. 24 ff. Resolution of the European Parliament of 27 February 2014 with recommendations to the Commission on the review of the European arrest warrant, 2013/2109 (INL), in OJ EU C 285, of 29 August 2017, p. 135 ff.

⁴CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, ECLI:EU:C:2016:198, published in the electronic Reports of the cases.

⁵CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit.

judge the relevant guidance on the method of verifying the relevant conditions of detention subjected to the requested person and after surrender, establishing whether they may thus constitute inhuman or degrading treatment so as not to make the relevant EWA functional. The inadequacy of prison conditions represent the relative threat to judicial cooperation in the criminal sector (Rogan, 2019; Rogan, 2021) as a susceptible element for mutual trust and mutual recognition in the area of freedom, security and justice (Mitsilegas, 2012; Willems, 2021),

“(...) prison conditions to which the recipient of the measure would be subjected is not by its nature easy, considering that the executing judges are required to obtain and evaluate information that is objective, reliable, precise and updated (...)”⁶.

Within this context, the implementation of prevention mechanisms in the sector of national and international torture as a function of power in places of deprivation of liberty are valuable in providing useful and specific elements for evaluation for the possibility that perhaps the object of an EWA suffers in the stage of detention some violations of their fundamental rights. The objective was:

“(...) to find the right balancing point between freedom, security and justice as essential components of the European space (...) after the “collision course” between mutual recognition, mutual trust and human rights (...) of the often prevalence of the repressive component over the guarantee component in the secondary law of the Union (...)” (Lenaerts, 2017).

⁶CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit.

Mutual recognition, mutual trust and protection of human rights

One of the main elements for the functioning of the EWA is the principle of mutual recognition and good functioning. Deprivation of liberty regardless of whether or not they are sentenced to a custodial sentence and awaiting trial have their right to the treatment of their dignity and fundamental rights, including inadequate detention conditions, prison overcrowding, deterioration of mutual trust on which judicial cooperation in criminal matters is based. As regards the principle of mutual trust, there is no univocal legal definition (Willems, 2016; Popelier, Gentile, Van Zimmeren, 2021). Mutual trust is qualified as a “constitutional principle” (Lenaerts, 2017) or “structural” also including the Stockholm program which states:

“(...) the prerequisite for effective cooperation (...) one of the main future challenges will consist in consolidating trust and in finding new solutions that encourage greater use of the various legal systems of the Member States and a better understanding of them (...)”⁷.

The European Council has already stated that:

“(...) the protection of the rights of investigated and accused in criminal proceedings is a founding value of the Union, essential to guarantee mutual trust between Member States and citizens' trust in the Union (...). The absence of mutual trust regarding the respect of rights humans in prisons tends to undermine the proper functioning of the EWA and of all the instruments of the European Union which have repercussions on personal freedom (...)”⁸.

⁷European Council, Stockholm Program - An open and secure Europe serving and protecting citizens, 2010/C 115/01, in OJEU C 115/1 of 4 May 2010, point 1.2.1.

⁸Council Framework Decision 2008/909/JHA of 27 November 2008 on the

The European Commission, in the Green Paper on the application of Union legislation on criminal justice in the field of detention, analysed:

“(...) do detention conditions influence mutual trust and mutual recognition, and in general what impact they have on judicial cooperation in criminal matters, analyzing the interaction between prison conditions and instruments based on the mutual recognition of judicial decisions in criminal matters (...) the high level of trust between Member States required for the functioning of the EWA (...) deteriorates where the judicial authorities must repeatedly weigh this trust against proven deficiencies relating to detention”⁹.

Elements which are also repeated in Framework Decision 2002/584/JHA, in Article 1 paragraph 3:

“(...) states must respect fundamental rights and European legal principles, however, the current legislation does not provide for the failure (or lacking) protection of human rights neither among the hypotheses of conditional surrender nor among the mandatory reasons for refusal of optional or mandatory execution (...)”¹⁰.

The lack of a basic rule allowed the CJEU to consider “the strongest fortress” (Ostropolski, 2015; Willems, 2019) in relation to the principle of defense of the principle of mutual

application of the principle of mutual recognition to criminal judgments imposing custodial sentences or measures involving deprivation of liberty, with a view to their enforcement in the European Union, OJEU L 327 of 5 December 2008, p. 27ss. Framework Decision 2008/947/JHA of the Council of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, in OJEU L 337 of 16 December 2008, p. 102ss. Framework Decision 2009/829/JHA of the Council of 23 October 2009 on the application between the Member States of the European Union of the principle of mutual recognition to decisions on alternative measures to pre-trial detention, in OJEU L 294 of 11 November 2009, p. 20ss.

⁹European Commission, Strengthening mutual trust in the European judicial area - Green Paper on the application of EU criminal justice law in the field of detention, COM/2011/0327 final, of 14 June 2011.

¹⁰Framework Decision 2009/829/JHA of the Council of 23 October 2009 on the application between the Member States of the European Union of the principle of mutual recognition to decisions on alternative measures to pre-trial detention, in OJEU L 294 of 11 November 2009, p. 20ss.

trust. When we talk about absence we are referring to the explicit reason for non-execution of the EWA which is connected with the protection of human rights which allowed the CJEU to follow not only the principle of mutual trust relating to the executing judicial authority but also a violation of the prohibition of torture and inhuman and degrading treatment according to Art. 4 CFREU (Blanke, Mangiamelli, 2021). A treatment prohibited by Art. 4 CFREU also checks for systemic deficiencies in detention conditions such as a situation reserved for certain groups of people, in detention centers. Thus the state of execution is functional to the positive obligation to respect human dignity, also including the illegitimacy of the methods of execution of the sentence which subjects an individual to a state of despondency, to a situation which overrides the inevitable suffering inherent to detention, taking taking into account the practical needs of imprisonment and the health and well-being of the prisoner as appropriate elements. The general risk is ascertained through methods that are not sufficient to constitute a reason for refusal relating to the execution of the surrender warrant and above all when the state of execution measures and ascertains every precise and specific risk of inhuman or degrading treatment against the individual who is the subject of the arrest order. This type of verification provides a positive outcome relating to the existence of the risk where the EWA is

not only temporarily executed and it is up to the executing state to take the relevant necessary measures while respecting the right to a fair trial, the prohibition of the presumption of innocence and the principle of proportionality, as well as the release of the individual subject to the measure.

Within this context the CJEU with the Radu¹¹ and Melloni¹² rulings of 2013 interpreted the effective balance of mutual recognition based on mutual trust and protection of human rights in the execution of the EWA, prevailing and motivating the need to guarantee the uniform application of the relevant framework decision and to safeguard the relevant prerequisites for judicial cooperation in criminal matters by avoiding situations of impunity and the presumption of the protection of individual rights in EU law. Already in Opinion 2/13 of the draft agreement on the accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms in practice the principle of mutual trust

¹¹CJEU, C-396/11, Ministerul Public-Parchetul de pe lângă Curtea de Apel Constanța v. Radu of 29 January 2013, ECLI:EU:C:2013:39, published in the electronic Reports of the cases. CJEU, C-26/62, Van Gend & Loos v. Amministrazione olandese delle imposte of 5 February 1963, ECLI:EU:C:1963:1, I-00003. C-56/65, Technique Minière of 30 June 1966, ECLI:EU:C:1966:38, I-00337. C-43/71, Politi of 14 December 1971, ECLI:EU:C:1971:122, I-01039. joined cases C-162 and 258/85, Pagnaloni of 12 June 1986, ECLI:EU:C:1986:246, I-01885. C-267/86, Van Eicke/ASPA of 21 September 1988, ECLI:EU:C:1988:427, I-04769. Rasmussen: calling the constitutionalization of the Treaty a “decisive turning point in the history of the European Court of Justice and of EU law in general. CJEU, Opinion 1/17 of 30 April 2019, ECLI:EU:C:2019:341, published in the electronic Reports of the cases, par. 110.

¹²CJEU, C-399/11, Stefano Melloni of 26 February 2013, ECLI:EU:C:2013:107, published in the electronic reports of the cases.

has been overcome (Picod, 2015; Wessel, Łazowski, 2015; Liakopoulos, 2018)¹³. The CJEU recognized:

“(...) in the area of freedom, security and justice, the principle of mutual trust requires respect for fundamental rights by other Member States to be presumed, so that they are precluded not only from the possibility of demanding from another Member State a higher level of national protection of fundamental rights than that guaranteed by Union law, but also, except in exceptional cases, that of verifying whether that other Member State has actually respected, in a concrete case, the guaranteed fundamental rights from the Union (...)”¹⁴.

These are two negative obligations (Bonichot, Aubert, 2016; Lenaerts, 2017). The first limit requires a Member State to have a level of national protection of fundamental rights that is higher than that guaranteed by Union law assuming equivalent protection (Sudre, 2021; Rainey, Wicks, Ovey, 2021; Klip, 2022; Villiger, 2023)¹⁵. As regards the second, the effective respect of the fundamental rights that are guaranteed by the Union in the specific work of another Member State is verified. This second does not constitute a presumption of an absolute nature as we noted in the words of the CJEU in Opinion 2/13

¹³Opinion 2/13, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECJ, 18 December 2014, ECLI:EU:C:2014:2454.

¹⁴Opinion 2/13, Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, ECJ, 18 December 2014, op. cit., par. 192.

¹⁵CJEU, C-414/20 PPU, MM of 13 January 2021, ECLI:EU:C:2021:4, published in the electronic reports of the cases, par. 48. C-241/15, Bob-Dogi of 1st June 2016, ECLI:EU:C:2016:385, par. 33. See also in relation on the equivalent protection from the ECtHR the next cases: Bivolaru and Michaud v. France of 6 December 2012; Moldovan v. France of 25 March 2021, which is affirmed that: “(...) 1) examines the conditions of application of the presumption of equivalent protection in relation to the execution of the EWA. with specific attention to prison conditions; 2) represents a further step in the dialogue between the European Court of Human Rights and the EU judge in a sensitive matter such as judicial cooperation in criminal matters (...)”.

and is overcome in “exceptional cases”. Thus the “exceptional cases” are verified as a justifying interpretation of the relative evaluation of the guarantees that respect human rights and which constitute the relative basic reason for suspension and refusal to execute the European arrest warrant¹⁶. The Member State of execution has the “elements” to attest for a concrete risk of inhuman or degrading treatment of prisoners in the issuing Member State. The prohibition of inhuman or degrading punishments or treatments, referred to in Article 4 of the Charter is absolute as it is strictly connected to respect for human dignity, referred to in Article 1 of the Charter and that this mandatory nature is confirmed by the correspondence between Article 4 of the Charter and Article 3 of the EctHR. The existence of a reason of implicit refusal in case of violation of fundamental rights is a reason for refusal which is expressly contained in Directive 2014/41/EU on the European Criminal Investigation Order¹⁷.

¹⁶C-168/13 PPU, *Jeremy F.* of 30 May 2013, ECLI:EU:C:2013:358, published in the electronic Reports of the cases, par. 50: “(...) the absence of the necessary provisions of the Framework it frameworks, it must be that the framework for the implementation of the objectives of the framework to a European Arrest Warrant (...)”. C-491/10 PPU, *Aguirre Zarraga* of 22 December 2010, ECLI:EU:C:2010:828, par. 70.

¹⁷Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 on the European Investigation Order in criminal matters OJ L 130, 1.5.2014, p. 1 et seq., art. 11 par. 1 lett. F: “(...) according to which the executing authority may refuse the recognition or execution of a European Investigation Order in criminal matters if: there are serious reasons to believe that the execution of the investigative measure requested in the EIO is incompatible with the obligations of the executing state under Article 6 TEU and the Charter (...)”.

The relative rejection of human rights initiated by the Aranyosi and Căldăraru case followed an individual sphere of the European arrest warrant as a limiting effect on personal freedom. The inaugurated two-step confirms in subsequent rulings that the EWA is not mandatory to a prohibition on torture and inhuman or degrading treatment and referred to the right to the general principle of fair trial. This interpretative path allows us to speak for a conciliation between mutual trust and respect for fundamental rights, favoring mutual recognition of judicial cooperation in criminal matters. Mutual trust is qualified in absolute terms that act as safety valves that prevent fundamental values in favor of the correct development of the area of freedom, security and justice.

The principle of mutual recognition included in mutual trust is understood as an expression of the principle of sincere cooperation of Art. 4, par. 3 TEU (Blanke, Mangiamelli, 2021), as well as the principle of equality between Member States before the treaties according to Art. 4, par. 2 TEU where the area of freedom, security and justice functions only if the precise assessment of respect for human rights is necessary (Gerard, 2016). Trust guarantees the functioning of the legislative instruments of a European judicial area which considers the conditions of detention inadequate due to the relative overcrowding of prisons which tend to undermine the relative

basis of this relationship of trust necessary to act on this front.

The Council, in the 2018 Conclusions on mutual recognition in criminal matters entitled: “Promoting mutual recognition by strengthening mutual trust”, stated:

“(...) states to initiate a series of actions such as: preparing rules that allow, where appropriate, to make use of alternative measures to detention in order to reduce the population inside detention centres; promote the training of operators also through participation in the activities organized by the European Judicial Training Network (REFG); promote exchanges between professionals; share best practices to strengthen mutual recognition and mutual trust, included within the Working Party on Cooperation in Criminal Matters or CATS; make full use of the possibilities of the European Judicial Network (EJN) and Eurojust; consider preparing a translation of the Council of Europe factsheet on conditions of detention and treatment of prisoners into the respective official languages (...)” (Satzger, 2019)¹⁸.

The Council has sent the European Commission to provide guidance of a practical nature regarding the jurisprudence of the CJEU concerning EWA also indicating:

“(...) find useful sources for professionals that contain objective, reliable and duly updated information on the institutions penitentiaries and detention conditions in the Member States (...)”¹⁹.

The relevant reliable and objective information is updated for transparency and qualification as a fundamental step in the evolution and conciliatory harmonization of trust between states. This is an attempt based on the criminal detention database according to the European Union Agency for Fundamental Rights (FRA) which has created a network of information

¹⁸Council conclusions on mutual recognition in criminal matters “Promoting mutual recognition by strengthening mutual trust”, 2018/C 449/02, in OJEU C 449 of 13 December 2018, p. 6ss.

¹⁹Council conclusions on mutual recognition in criminal matters “Promoting mutual recognition by strengthening mutual trust”, 2018/C 449/02, in OJEU C 449 of 13 December 2018.

relating to detention including cell space, prisoner health, access to medical care and protection against violence in the Member States of the Union according to European standards, as well as international monitoring bodies for the prevention of torture.

Prison conditions, two step evaluation and CJEU

Already in the two-step evaluation established by the CJEU itself, it was noted that the cross-border transfer of asylum seekers cannot be carried out when the destination presented some systemic deficiencies relating to the asylum system and reception conditions²⁰. The CJEU extended the evaluation also overcoming systemic deficiencies, orienting itself towards deficiencies that: “affect certain groups of people and certain detention centers” (Bovend'eerd, 2016; Villiger, 2023)²¹. The two-step is thus ascertained in practice as well as the relevant conditions of detention of the issuing Member State and the conditions susceptible to a precise risk of inhuman and degrading treatment where the executing authority carries out an assessment of an individual nature relating to the recipient of the EWA²².

²⁰CJEU, C-411/10, N.S. and others of 21 December 2011, ECLI:EU:C:2011:865, I-13905.

²¹ECtHR, Tarakhel v. Switzerland of 4 November 2014, par. 104. CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit., par. 89.

²²European Union Agency for fundamental Rights-FRA, Criminal detention in the EU: conditions and monitoring:

The first level assessment of the executing judicial authority is based on objective, reliable, precise and duly updated elements which can be obtained from a wide range of internal and international sources formulating a purely illustrative list consisting of international judicial decisions, such as ECtHR sentences, judicial decisions of the issuing Member State, as well as decisions, reports and other documents prepared by the bodies of the Council of Europe or belonging to the United Nations system. A fundamental importance of the results of this type of information is the result of a passage from a level of individual in-depth analysis to individualization which directly concerns the foreseeable future of the recipient of the EWA. Perhaps we can speak for an evaluation of a high level examined in a concrete and precise way where the individual risk of inhuman and degrading treatment is the cause of the prison conditions.

The expansion of the relevant material for evaluating prison conditions also includes the relative deficiencies that afflict the entire penitentiary system, allowing for a passage to be carried out that guarantees greater individualization of the cases under examination.

<https://fra.europa.eu/en/databases/criminal-detention/criminal-detention>

The Luxembourg judges, through the two-step evaluation, examined the conditions of detention in the issuing Member State where the conditions of detention that exist within each penitentiary institution where the prisoner is located are also precisely assessed (Marguery, 2018)²³. This is an excessive demonstration which is carried out within the time limits set by Art. 17 of the framework decision on the operation of the EWA²⁴. The impunity that follows the objective pursued by the framework decision is the general objective of Art. 3, par. 2 TEU which offers its citizens an area of freedom, security and justice by ensuring appropriate measures for the prevention and fight against crime²⁵. It is obvious that the executing authority requests exclusive information foreseen by the detention of the recipient of the EWA in a temporary or transitional manner²⁶. The evaluation of detention conditions concerns the method of personal space available for the prisoner. Position which was also based on the jurisprudence of the ECtHR according to the *Muršić v. Croatia* case²⁷:

23CJEU, C-220/18 PPU, ML of 25 July 2018, ECLI:EU:C:2018:589, published in the electronic Reports of the cases, par. 78.

24Framework Decision 2002/584/JHA of the Council of 13 June 2002 concerning the European arrest warrant and the surrender procedures between Member States, in OJ L 190 of 18 July 2002, par. 17.

25CJEU, C-579/15, *Popławski* of 29 June 2017, ECLI:EU:C:2017:503, par. 23. C-182/15, *Petruhhin* of 6 September 2016, ECLI:EU:C:2016:630, parr. 36-37, both the above cases published in the electronic Reports of the cases.

26CJEU, C-220/18 PPU, ML of 25 July 2018, op. cit., par. 87. C-128/18, *Dorobantu* of 15 October 2019, ECLI:EU:C:2019:857, not yet published, par. 66.

27ECtHR, *Muršić v. Croatia* of 20 October 2016.

“(...) to carry out a quantification and qualification of the space available per prisoner to be considered adequate, and more generally about the relevant structural requirements so that the conditions of detention are considered compliant with EU law (...)” (Sudre, 2021).

The EWA execution authority risks putting the detainee in the penitentiary institution at risk of torture and does not guarantee:

“(...) in the absence of any precise element that allows us to believe that the conditions of detention existing inside of a particular penitentiary institution are contrary to Article 4 of the Charter (...)”²⁸ capable of binding its author and, if a violation were to materialise, could be enforced in court before the domestic judge of the issuing Member State (...)”²⁹.

Thus the examination of the principle of mutual trust comes forward by specifying that:

“(...) the guarantee received from the issuing authority, in “exceptional circumstances”, and on the basis of “precise elements”, the executing judge can establish the existence of a “real risk” that the person concerned would suffer inhuman or degrading treatment, pursuant to Article 4 of the Charter, due to the conditions of detention to which he or she would be subjected in the issuing Member State (...)”³⁰.

Thus, the executing judge does not ignore the related guarantees and reassurances which constitute a presumption of mutual trust which conflicts with this limit, considering that the CJEU constitutes one of the

“(...) exceptional circumstances of the second level, after the occurrence of exceptional circumstances triggers the two-step test, suspending the simplified surrender system on which the European arrest warrant is based (...)”³¹.

²⁸CJEU, C-220/18 PPU, ML of 25 July 2018, op. cit., par. 112. C-128/18, Dorobantu of 15 October 2019, op. cit., par. 68.

²⁹CJEU, C-220/18 PPU, ML of 25 July 2018, op. cit., par. 111.

³⁰CJEU, C-128/18, Dorobantu of 15 October 2019, op. cit., par. 68.

³¹According to the conclusions of the Advocate General Sánchez-Bordona in case C-128/18, Dorobantu of 30 April 2019, ECLI:EU:C:2019:334, parr. 55-56: “(...) therefore cannot share the opinion that the executing judicial authority could question and check the reliability of such a guarantee in the light of the data available as regards the conditions of detention in the Member State concerned. 56. Far from recalling the mutual trust that must govern the relationship between the issuing

The Dorobantu case reaffirms the protection of absolute rights:

“(…) as a balancing act (…) to safeguard the effectiveness of judicial cooperation in criminal matters and the principles of mutual trust and mutual recognition (...). The executing judicial authority is required to trust the information received from the authorities of the issuing Member State to assess whether these rights risk being violated in the specific case, unless there are “precise elements” which indicate a concrete risk of violation of Article 4 CFREU (...)”³².

According to the Dorobantu case, the CJEU did not give details relating to the expression of: “precise elements” and “real risk” which concerns inhuman and degrading treatments, thus refuting the presumption that the principles of mutual trust between Member States respect the assurances received. The judge of the Union provides plausible interpretative elements on the doubts of the guarantees provided according to the two-step level which raises information that is received in the issuing state and contradictory to the precise elements that contribute to the transmission of deficient and untimely reassurances. Within this profile, the sending of information plays a central role relating to the detention conditions entrusted to torture prevention bodies.

The CJEU stated:

“(…) the absolute nature of the prohibition on torture and inhuman or degrading treatment or punishment places an obligation on Member States to achieve results (...) the commitment made by states to strengthening the control of detention conditions, such as the establishment of a mediation system or the establishment of an effective judicial remedy pursuant to

judicial authorities and the executing judicial authorities, such a check would nourish a mutual distrust and, consequently, call into question the simplified delivery system on which establishes the European Arrest Warrant (...). See also the conclusions of the Advocate General Jean Richard De La Tourt in case C-158/21, Puig Gordi and others of 14 July 2022, ECLI:EU:C:2022:573, not yet published.

32CJEU, C-128/18, Dorobantu of 15 October 2019, op. cit., par. 74.

Article 47 CFREU, is not conclusive for the purpose of deciding on the surrender of a person subject to a European arrest warrant, as it is not per se suitable to exclude a violation of Article 4 CFREU, due to the conditions of detention (...)”³³.

The executing judicial authority carries out an assessment of prison conditions, after the progress made by the issuing state which improves the detention system by identifying the peculiar situation of the subject of an EWA³⁴. At the same time the ECtHR has noted the judicial remedies that are introduced and represent a correction of the violations of the principles of the ECHR resulting from the conditions of detention which concern the overcrowding of penitentiary institutions as well as the right to effectively review the internal remedies of the practical application (Sudre, 2021)³⁵.

Independence of judges, rule of law and two-step test

Judicial harmonization even in cases of exceptional circumstances is a point of reference that concerns mutual trust between Member States as we have seen in the preliminary ruling case proposed by the Irish High Court relating to the execution of European arrest warrants issued by Polish judges against LM³⁶.

33CJEU, C-220/18 PPU, ML of 25 July 2018, op. cit., par. 113. C-128/18, Dorobantu of 15 October 2019, op. cit., par. 74.

34CJEU, C-220/18 PPU, ML of 25 July 2018, op. cit., par. 75. C-128/18, Dorobantu of 15 October 2019, op. cit., par. 81.

35ECtHR, Domján v. Hungary of 14 November 2017.

36CJEU, C-216/18 PPU, LM of 25 July 2018, ECLI:EU:C:2018:586, published in the electronic Reports of the cases. C-488/19, Minister for Justice and Equality (Mandat d’arrêt - Condamnation dans un État tiers, membre de l’EEE) of 17 March

The CJEU also relied on Art. 4 CFREU considering that the derogation from an execution of an arrest warrant is a real risk of violation of the right of recipient of the EWA in relation to an independent judge which refers to the right to a fair trial protected by Art. 47, lett. 2 CFREU (Blanke, Mangiamelli, 2021). The independence of judges is a topic that also dates back to international law and which represents the heart of the principle of fair trial. The independence of judges means independence of the judicial power, access to justice and a fair trial as protection of human rights for the individual which represents a factor of general guarantee of the common values of the EU announced in Art. 2 TEU and as a principle of protection of the rule of law (Liakopoulos, 2019b; Pech, Wachowiec, Mazur, 2021; Liakopoulos, 2022). The executing judicial authority is automatically required to execute any WEA that is issued by a given Member State only in the presence of a decision of the European Council which states:

“(...) a serious and persistent violation in the Member State issuing the principles enshrined in Article 2 TEU, and in this case in particular the rule of law which was followed by an explicit suspension by the Council of the application of Framework Decision 2002/584/JHA towards that Member State (...)” (Sarmiento, 2018; Bård, Van Ballegooij, 2018; Konstadinides, 2019; Zinonos, 2019; Biernat, Filipek, 2021)³⁷.

A block on the execution of the EWA can only be assessed in the specific cases of ascertaining the essential violation of the

2021, ECLI:EU:C:2021:206, not yet published.

37CJEU, C-216/18 PPU, LM of 25 July 2018, op. cit., par. 72.

fundamental right to a fair trial. This conduct thus follows the methodology of the two-step oriented by the Aranyosi and Căldăraru cases, also adding the relevant elements that highlight this circumstance under examination. Systemic shortcomings relating to the independence of judges in the issuing Member State may have an impact on the judicial authorities competent for proceedings that are subject to the EWA. The second level of control individualizes the assessment of the existence of serious and proven reasons that run a real risk for the violation of the fundamental right of fair trial where the independence of the judge is important for carrying out the dialogue with the judicial authority of issue that provides information of a complementary nature necessary for the assessment of this relative risk. According to the CJEU:

“(...) execution must also carry out its assessment in light of the nature of the crime for which the person in question is being prosecuted and the factual circumstances underlying the European arrest warrant (...) a clear discrepancy compared to the protection reserved by the Union judge in case of risk of violation of an absolute right such as that enshrined in Article 4 CFREU, compared to a right susceptible to limitations and which may therefore be the subject of a balancing of rights, interests and the objectives in the field (...)”³⁸.

The non-execution of the EWA to any type of automatism was reported in the L and P ruling, where the CJEU:

“(...) excludes the hypothesis of denial of the qualification of issuing judicial authority pursuant to Article 6 paragraph 1 of the framework decision even if the executing judicial authority has elements that highlight systemic or generalized violations relating to the independence of the judiciary, being in any case not capable of giving rise to a presumption of violation of the right

³⁸CJEU, C-216/18 PPU, LM of 25 July 2018, op. cit., par. 72.

to a fair trial (...). The existence of such deficiencies does not necessarily affect any decision taken in the specific case by the courts of the Member State in question (...)"³⁹.

It is noted that the CJEU was based on an interpretation of exclusion of the violation, even of a systemic or general nature, of the values of the EU, justifying the related reason for general refusal of the EWA which is issued by a specific Member State without prejudice to the relevant decision of the European Council of Art. 7 TEU (Blanke, Mangiamelli, 2021).

According to the conclusions of the Advocate General Sánchez-Bordona in L and P cases, the referring judge:

"(...) whether the worsening of the systemic or generalized deficiencies regarding the independence of the judiciary in the issuing state allows the second phase of the two-step test⁴⁰, concludes negatively (...) highlights such a solution could lead to a situation of impunity, also jeopardizing the rights of the victims of the crimes of which the person against whom an EWA is issued is accused, furthermore it would tend to delegitimize the professional activity of all the judges of the Member State, making their participation in inter-European cooperation mechanisms in a sensitive matter such as criminal law impossible (...)"⁴¹.

The two-step in this case is a quick step test where the extent of the exceptional circumstances are limits relating to mutual trust and mutual recognition which compromise the useful effect of the framework decision. The judges of the Union leave a bypass to the political and expected process of Art. 7 TEU to achieve the de facto suspension of the application of delivery procedures

³⁹CJEU, C-216/18 PPU, LM of 25 July 2018, op. cit., par. 72.

⁴⁰Conclusions of the Advocate General Manuel Campos Sánchez-Bordona in joined cases C- 354/20 and C-412/20, L and P of 12 November 2020, ECLI:EU:C:2020:925, par. 48.

⁴¹Conclusions of the Advocate General Manuel Campos Sánchez-Bordona in joined cases C- 354/20 and C-412/20, L and P of 12 November 2020, op. cit., par. 49.

to the EWA (Vandamme, 2021).

What is the objective information on the control of places of detention?

We must follow a double check on the sources of objective, reliable and updated information relating to the role of visit and control mechanisms on the places of detention where the subject is located within the EWA. But the discussion is very complex and broad regarding places of detention for all, mentioning the need for information that includes:

“(...) objective, reliable, precise and appropriately updated elements on the detention conditions in force in the issuing Member State (...)”⁴².

Difficult access to information in the presence of systemic deficiencies given the lack of specific *ratione personae* or *ratione loci* which affects specific groups of people or some penitentiary institutions such as carrying out the assessment necessary for the completion of the two-step test.

These are evaluative elements of prison conditions which also determine judicial decisions at a national, European and international level given that the ECtHR has given many and varied ideas for interpretation in the sector. Finding and evaluating such sources is very difficult due to the fragmented nature of language barriers. As can already be seen, the Council in the aforementioned Conclusions on mutual recognition in criminal matters invited the Commission:

⁴²CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit., par. 89.

“(...) to provide practical guidance regarding the recent jurisprudence of the CJEU, in particular the jurisprudence relating to the Aranyosi and Căldăraru case (...) the place in which to find useful sources for professionals that contain objective, reliable and duly updated information on penitentiary institutions and detention conditions in the Member States (...) also urging Member States to consider the possibility of preparing translations of the information sheet of the Council of Europe on the conditions of detention and the treatment of prisoners to make them available in all the official languages of the Union (...)”⁴³.

These are national, regional or bodies belonging to the UN system where the documents and reports can be functional in relation to the authorities of the execution of the appropriate information in the execution of the two-step texts considered as a control mechanism, prevention of torture and inhuman and degrading punishments or treatments that have direct access to places of deprivation of liberty. The Committee for the Prevention of Torture and Other Inhuman and Degrading Treatment within the framework of the Council of Europe⁴⁴ follows the mechanisms provided for in the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)⁴⁵ which:

“(...) is equipped with a double level of control: international with the Subcommittee for the prevention of torture and other cruel, inhuman or

⁴³CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit., par. 90.

⁴⁴Council of Europe, European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, CPT/Inf/C (2002) 1, European Treaty Series-No. 126. Text amended pursuant to Protocol No. 1 (ETS No. 151) and Protocol No. 2 (ETS No. 152), in force since 1 March 2002.

⁴⁵United Nations, General Assembly, Resolution 57/199 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 18 December 2002.

degrading treatment or punishment (SPT) and national with the National Preventive Mechanisms (NPMs) (...)"⁴⁶.

There are no obligations on the part of the EU that the establishment of a control and monitoring body of places of deprivation of liberty are different regulatory instruments of a regional and universal nature of the establishment of bodies for inspection and monitoring of places of deprivation of liberty. The European penitentiary rules are highlighted. The Council of Europe⁴⁷ provides that:

"(...) all prisons shall be subject to regular inspection and independent monitoring (...)"⁴⁸.

This recommendation entitled: Inspection and monitoring, specifies:

"(...) that inspection activities should be carried out by one or more independent state bodies, with full access to places of detention, information on conditions of detention and treatment and records penitentiaries, as well as having the power to conduct private and confidential interviews with prisoners and penitentiary staff (...). These national agencies should assess whether prisons are administered in accordance with domestic and international law and, furthermore, the Rules urge the publicity of reports monitoring procedures drawn up and the related state responses as well as to the collaboration between control bodies established at all levels (...)"⁴⁹.

⁴⁶United Nations, General Assembly, Resolution 57/199 Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, A/RES/57/199, 18 December 2002.

⁴⁷Committee of Ministers of the Council of Europe, Rec(2006)2-rev, European Prison Rules, adopted 11 January 2006 revised and 1 July 2020.

⁴⁸Committee of Ministers of the Council of Europe, Rec(2006)2-rev, cit., art. 9.

⁴⁹Committee of Ministers of the Council of Europe, Rec(2006)2-rev, cit., artt. 92-93: "92. Prisons shall be inspected regularly by a state agency in order to assess whether they are administered in accordance with the requirements of national and international law and the provisions of these rules. 93.1 To ensure that the conditions of detention and the treatment of prisoners meet the requirements of national and international law and the provisions of these rules, and that the rights and dignity of prisoners are upheld at all times, prisons shall be monitored by a designated independent body or bodies, whose findings shall be made public. 93.2 Such independent monitoring bodies shall be guaranteed: a. access to all prisons and parts

Most Member States have ratified the OPCAT which established a national body for the prevention of torture⁵⁰. The NPMs consists of:

“(...) in guaranteeing the continuity of work in the territory, also representing a constant solicitation towards governments for the improvement of penitentiary systems (...)” (Steinerte, Murray, 2009).

The bodies established by the Member States:

“(...) do not possess perfectly overlapping powers, functions and characteristics (...) all have access to places of deprivation of liberty; and prepare annual reports, for each single visit, thematic and/or of other nature (...)” (Aizpurua, Rogan, 2020; Willems, 2021).

The relevant reports are used by the executing authorities as sources of information that are reliable and independent in the execution of the EWA as well as exceptional circumstances that are infrequent that require a relevant assessment of prison conditions. The CPT reports are taken into account in the jurisprudence of a form of deprivation of liberty (Villiger, 2023)⁵¹. The reconstruction of the sentences of the ECtHR and

of prisons, and to prison records, including those relating to requests and complaints, and information on conditions of detention and prisoner treatment, that they require to carry out their monitoring activities; b. the choice of which prisons to visit, including by making unannounced visits at their own initiative, and which prisoners to interview; and c. the freedom to conduct private and fully confidential interviews with prisoners and prison staff. 93.3 No prisoner, member of the prison staff or any other person, shall be subject to any sanction for providing information to an independent monitoring body (...)”.

50Committee of Ministers of the Council of Europe, Rec(2006)2-rev, cit., art. 93.4: “(...) independent monitoring bodies shall be encouraged to co-operate with those international agencies that are legally entitled to visit prisons. 93.5 Independent monitoring bodies shall have the authority to make recommendations to the prison administration and other competent bodies. 93.6 The national authorities or prison administration shall inform these bodies, within a reasonable time, on the action being taken in respect of such recommendations. 93.7 Monitoring reports and the responses thereto shall be made public (...)”.

51ECtHR, Torreggiani and others v. Italy of 8 January 2013. Varga and others v. Hungary of 10 March 2015. Voicu v. Romania of 27 January 2015. Neshkov and

the CJEU always create an open and broad dialogue where one covers the other, also raising problems of national law as can also be seen from the extensive preliminary rulings⁵² (Aizpurua, Rogan, 2020; Martufi, Gigengack, 2020). The preliminary questions in the case de quo the Hanseatisches Oberlandesgericht in Bremen, refers to the CPT reports:

“(…) made after periodic visits to Hungary in 2009⁵³ and 2013⁵⁴ and to Romania in 2014⁵⁵ taking them as sources of information from which “concrete indications” emerge that the conditions of detention to which Mr. Aranyosi and Mr. Căldăraru would be subjected in the event of surrender to the Hungarian and Romanian authorities respectively do not satisfy the minimum standards required by international law, particularly highlighting the significant overcrowding of the detained population (…)”⁵⁶.

The possible role of national or international mechanisms for controlling detention conditions such as information tools pursuant to Article 15, par. 2, is highlighted by the Union judge in Aranyosi and Căldăraru and in ML. He indicates to the executing authorities the possibility that the additional

others v. Bulgaria of 27 January 2015.

⁵²CJEU, C-480/21, Minister for Justice and Equality (Tribunal établi par la loi dans l’État membre d’émission-II) of 12 July 2022, ECLI:EU:C:2022:592, not yet published.

⁵³European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Hungary, periodic visit carried out from 24 March to 2 April 2009, CPT/Inf (2010) 16, published 8 June 2010.

⁵⁴European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Hungary, Periodic Visit carried out 3 to 12 April 2013, CPT/Inf (2014) 13, published 30 April 2014.

⁵⁵European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Report to the Government of Romania, periodic visit carried out from 5 to 7 June 2014, CPT/Inf (2015) 31, published on 24 September 2015.

⁵⁶CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit., parr. 44 and 61.

information requested may concern the existence, in the issuing Member State, of such bodies which allow the assessment of the current state of detention conditions in such institutions⁵⁷.

It is understood that the CJEU has taken into account the mechanisms for visiting and monitoring information that is relevant to the conditions of detention in speciem. The CJEU indirectly indicated:

“(...) that the presence of such bodies may in itself be an element to be taken into consideration when deciding on the existence of a real risk of violation of fundamental rights (...)” (Rogan, 2019).

Concluding remarks

The Council of 4 December 2020 in its conclusions considered human rights by stating:

“(...) the European arrest warrant and extradition procedures-Current challenges and future prospects”⁵⁸ of 4 December 2020, and the Resolution of European Parliament, of 20 January 2021, on the implementation of the European arrest warrant and surrender procedures between Member States (...)”⁵⁹.

The EAW is an important step for the development of criminal cooperation as a principle of mutual trust between Member States by achieving the mutual recognition of sentences relating to judicial decisions as a standard of cooperation and

⁵⁷ CJEU, C-220/18 PPU, ML of 25 July 2018, op. cit., par. 63. CJEU, joined cases C-404/15 and C-659/15, P. Aranyosi and R. Căldăraru of 5 April 2016, op. cit., parr. 95 and 96.

⁵⁸Council conclusions “The European arrest warrant and extradition procedures-Current challenges and future perspectives”, 2020/C 419/09, in OJ EU C 419/23 of 4 December 2020, p. 23ss.

⁵⁹European Parliament resolution of 20 January 2021 on the implementation of the European arrest warrant and surrender procedures between Member States, 2019/2207(INI).

transparency that allows the executing authorities of the issuing authorities that respects the criteria required by EU law. The principle of mutual trust contributes to ensuring respect for fundamental rights in prisons by promoting the improvement of detention conditions and ensuring the connection between EWA and detention conditions. In the same way, the European Parliament on the implementation of the European arrest warrant and surrender procedures between Member States states:

“(...) the existence of positive legal obligations which require them to make every effort to guarantee detention conditions consistent with human dignity as well as carrying out thorough and effective investigations into violations of rights (...) improving the rule of law, fundamental rights, prison conditions and knowledge of other legal systems among practitioners will contribute to strengthening mutual trust and mutual recognition (...)”⁶⁰.

This is a high level of respect for fundamental rights which refers to a European level with regard to mutual trust between Member States. A mutual trust oriented towards a horizontal level where mutual recognition requires a sacrifice of national sovereignty, such as a blind, functional trust relating to the development of an area of freedom, security and justice susceptible to the two-step test in the sector of EWA and where exceptional circumstances require it as a stimulus for the improvement of detention conditions, allowing a form of mutual control as the final objective of respect and protection of human

⁶⁰European Parliament resolution of 20 January 2021 on the implementation of the European arrest warrant and surrender procedures between Member States, 2019/2207(INI).

dignity. The improvement of detention conditions are exclusive towards states subjected under the EWA as an unsatisfactory result and contrary to equal treatment (Rogan, 2019).

The national legislation is varied, incomplete and unbridgeable to constitute a strong, important step for the protection of fundamental rights as we also understood from the CJEU and by the conclusions of the Advocate General Yves Bot in the Bob-Dogi case⁶¹ and in the Aranyosi and Căldăraru cases⁶². The CJEU affirmed the need for a precise and effective procedural guarantee of the rights of the defense in the issuing Member State as a drastic framework for the execution of the EWA, where the indispensable balance is inherent in the construction of a European judicial area, between the requirements of effectiveness of criminal justice and the imperatives of safeguarding fundamental rights⁶³, considering that the maintenance of this balance takes on a double value being indispensable for the existence of mutual trust and for respect of the rights of the requested person⁶⁴.

61CJEU, C-241/15, Bob-Dogi of 1st June 2016, ECLI:EU:C:2016:385, note yet published, par. 30-58. "(...) the European arrest warrant shall contain the following information, in the presentation established by the attached model: (...) c) indication of the existence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same force and which falls within the scope of Articles 1 and 2 (...)".

62CJEU, Conclusions of the Advocate General Yves Bot in cases: Bob-Dog of 12 March 2016 and in Aranyosi e Căldăraru of 3 March 2016.

63CJEU, Conclusions of the Advocate General Yves Bot in case: C-241/15, Bob-Dogi, ECLI:EU:C:2016:131, par. 55.

64CJEU, Conclusions of the Advocate General Yves Bot in case: C-241/15, Bob-Dogi, ECLI:EU:C:2016:131, par. 56.

This system which covers the work of torture prevention mechanisms is now part of a process of the decision-making of the EU contemplating the hypothesis of coordination of the national authorities obtaining the relevant data in a comparable way.

The executing authorities request the relevant information directly from the bodies involved, thus highlighting their purposes in relation to information from judicial authorities and evaluating the conditions of detentions between various Member States and the procedures for handing over people who have undergone EWA. The CJEU has favored the exchange of information of judicial authorities based on mutual trust following the advice where through the conclusions on the European arrest warrant and extradition procedures it adopted the Framework Decision 2002/584/JHA which will take effect on 13 June 2022, where:

“(...) identifies five areas connected to the application of the framework decision susceptible to improvement, among which it inserts the need to support the enforcement authorities in carrying out assessments of fundamental rights (...) underlines how in the system established by framework decision, the execution of the European arrest warrant, based on the principle of mutual trust, must represent the norm, while the refusal to execute can only represent an exception, being likely to increase the risk of impunity, as well as in relation to safety of citizens and protection of victims (...)”⁶⁵.

⁶⁵Council conclusions, The European arrest warrant and extradition procedures, op. cit., par. 5: “(...) agrees that there is room for improvement in the following areas: A. Strengthen national transposition and enforcement practice of the framework decision on EAW; B. supporting the executing authorities in carrying out fundamental rights assessments; C. dealing with certain aspects of the procedure in the issuing and

The Council continues to be faithful to the steps of the ruling of Aranyosi and Căldăraru, highlighting:

“(...) the executing judicial authorities are entrusted with the difficult task of resolving in an individualized way the conflicts that arise between mutual recognition and the protection of fundamental rights, where, in exceptional circumstances and under certain conditions (...) there is a real risk that the surrender of the data subject could lead to inhuman or degrading treatment within the meaning of Article 4 CFREU, due to the conditions of detention in the issuing state, or to a violation of the fundamental right to an impartial judge enshrined in Article 47, lett. 2 CFREU due to concerns regarding the independence of the judiciary in the issuing state (...)”.

The connection with the two-step highlighted the relative importance in the area of support and information which specified:

“(...) the relevant objective, reliable, specific and duly updated information to enable them to assess the existence of shortcomings in prison conditions in the issuing Member State; in the second phase to all the information relevant to the assessment of the concrete case (...) the two-step assessment necessary in case of alleged risk of violation of the fundamental right to a fair trial linked to the lack of independence of the judicial bodies due to systemic deficiencies or generalized, in this case taking into consideration the personal situation, the nature of the crime and the factual circumstances underlying the issuing of the EWA (...)”⁶⁶ (...) to update the manual on the European arrest warrant, developing guidance and practical solutions to be provided to operators, taking into account the ninth round of mutual evaluations and suggesting the development of a template for requesting additional information pursuant to Article 15(2) of Framework Decision 2002/584/JHA (...)”.

Also following the digitalisation process within the EWA as a means of facilitating the relevant information on detention conditions and consent to access as the main right of defence.

executing Member States; D. dealing with requests for extradition of nationals to third countries; E. strengthen surrender procedures under the European arrest warrant in times of crisis (...)”.

⁶⁶Council conclusions, The European arrest warrant and extradition procedures, op. cit., par. 6.

The Council and Parliament via the Resolution of January 2021 regarding the creation of a database on criminal detention including also the work of the FRA meets the relevant requirements pre-established by the CJEU as data, functional elements hoping for a centralized database for national jurisprudence and enforcement of the EWA through references from expert lawyers on the EWA thus also contributing to the protection of the right to a lawyer⁶⁷.

Lastly we can imagine that there will be many reforms at the national level with the objective of formulating the protection of human rights according to the primacy of the EU law and the principle of mutual recognition based on mutual trust. A codification oriented and based on the jurisprudence of the CJEU motivated and based on the risk of individual violation of the fundamental rights of the requested person and at the same time the CJEU itself as the absolute protagonist of the protection of human rights.

⁶⁷Resolution of the European Parliament of 20 January 2021, P9_TA(2021)0006 European Arrest Warrant and surrender procedures between Member States European Parliament resolution of 20 January 2021 on the implementation of the European Arrest Warrant and the surrender procedures between Member States (2019/2207(INI)) (2021/C 456/01) cit., par. 28. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021IP0006>

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